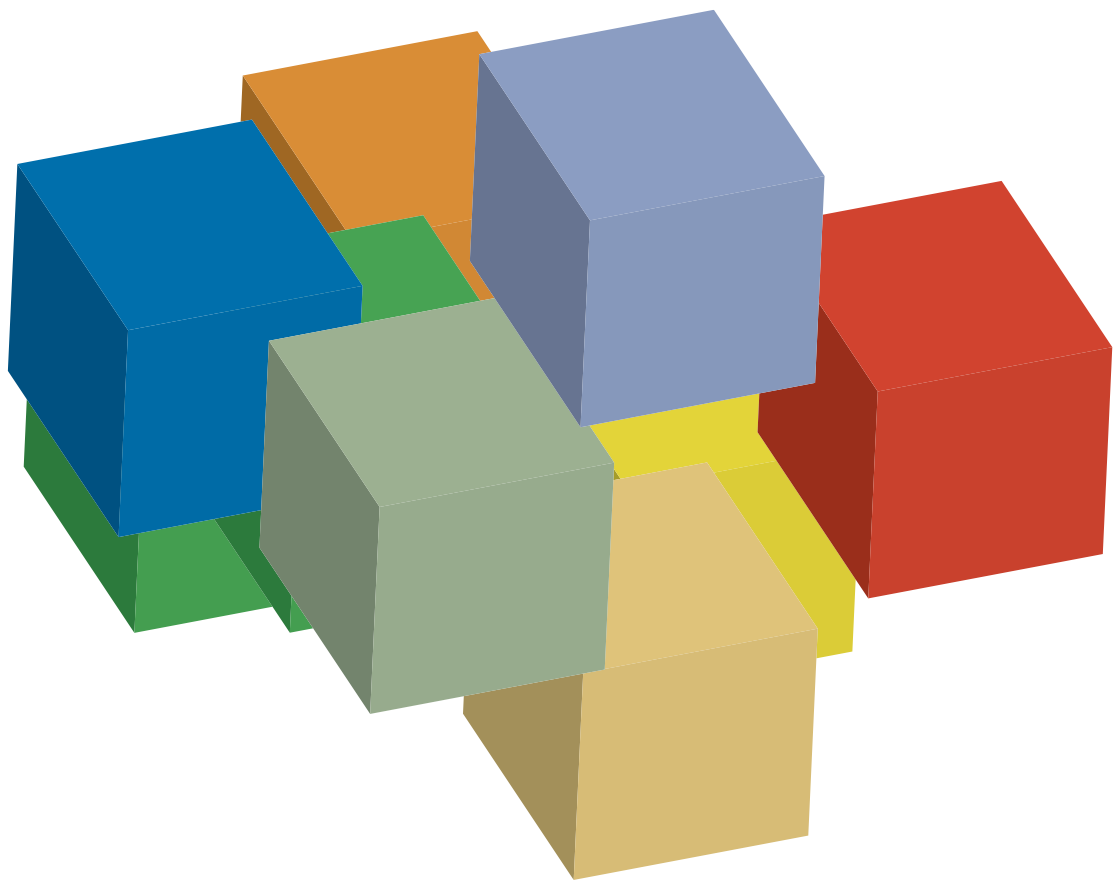


Pension-Related Changes Massachusetts General Laws & Federal Statutes Part II

Judith Corrigan
Associate General Counsel, PERAC

PERAC Seminars | Fall, 2004



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Pension-Related Changes

Massachusetts General Laws & Federal Statutes

Part II

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Table of Contents

• G.L. c. 32, § 5(1)(e)	1
• Section 5(1)(e) Repeal Timeline	1
• Goodridge	2
• Page 17 of the Verified Complaint in Goodridge	3
• Dependent Age Uniformity	4
• G.L. c. 32, §§ 7, 9, 12B, 26 and 100	5
• Changes in and Relating to Section 15	6
• G.L. c. 32, § 15	7

Note: The Governor disapproved this section, but the legislature overrode his veto.

SECTION 322. Notwithstanding any general or special law to the contrary, where (i) 2 spouses married to each other are both members of the same or different systems, (ii) each of the spouses were members in service on or before November 1, 2003, and (iii) 1 of the 2 members is retired under the provisions of sections 1 to 28, inclusive, of said chapter 32; then the other member, upon his or her written application to the board, shall be retired for superannuation regardless of such member's age. The retirement of the other member shall occur on a date specified in the application, and must be subsequent to, but not more than, 4 months after the date of filing the application. The form of the application shall be prescribed by the board. Terms used in this section not herein defined are used as such terms are defined in chapter 32 of the General Laws.

Section 5(1)(e) Repeal Timeline

July 1, 2003	Aug. 12, 2003	Sept.10, 2003	Oct. 24, 2003	Oct. 27, 2003	Feb. 13, 2004 to June 4, 2004	July 1, 2004
In enacting the FY04 state budget, the Legislature repeals G.L. c. 32, § 5(1)(e), the so-called "Spousal Retirement Provision," which had first been enacted in 1945.	PERAC determines that any member who applied for retirement using G.L. c. 32, § 5(1)(e) before July 1, 2003 with a retirement date after July 1, 2003 will be eligible to retire using this provision despite its repeal.	DALA issues a decision permitting a member who applied to retire after July 1, 2003 to take advantage of the Spousal provision despite its repeal because a member of a retirement system is protected in the core of his or her reasonable expectations as to pension and benefits. CRAB decides to hear the case on its own initiative, so decision not final.	PERAC notifies the boards that the Legislature has overridden the Governor's veto of an extension of the time to file under G.L. c. 32, § 5(1)(e). PERAC determines that any member wishing to retire under this section has only until October 31, 2003 to do so.	PERAC informs the boards that it has determined that any member who applies for retirement using this provision before November 1, 2003 with a retirement date up to or after November 1, 2003 will be eligible to retire under this provision despite its pending repeal.	DALA issues decisions in three more cases involving the spousal retirement provision, again determining that the petitioners should be able to retire under Section 5(1)(e).	In enacting the FY 2005 state budget, the Legislature provides that although G.L. c. 32, § 5(1)(e) has been repealed, if the husband and wife were married to each other and members of their respective systems prior to November 1, 2003 they may avail themselves of this provision.

Goodridge

Late last year, the Supreme Judicial Court handed down a decision in the matter of **Goodridge v. Dep't of Public Health**, 440 Mass. 309 (2003). This was a case in which seven same sex couples had attempted to obtain marriage licenses and had been denied those licenses. Because you need a marriage license to wed in the Commonwealth, the denial of the licenses was tantamount to denying these couples the right to marry. As we all know by now, the Court decided that same sex couples in Massachusetts have a right to marry.

This decision has caused confusion in many areas of Massachusetts law, particularly in those matters where the federal government is involved. However, the decision is clearer in the interpretation and implementation of Chapter 32 and our retirement laws. Any member of a retirement system who is married to a person of the same sex will be eligible for the same benefit and in the same manner as have previously been available to any married couple.

In general, in discussing benefits available to married couples, Chapter 32 utilizes the term "spouse." Other terms may be used in other places, such as the use of the term "widow" in Section 101. However, as a 1987 Opinion of the Attorney General made clear, that section must also be read to apply to "widowers." It follows logically that where the term "husband," "wife," "widow," or "widower" are used, the board should look to who is the spouse of the member in those cases in determining an award of benefits.

87. At the request of Rich's mother, Rich will soon assume sole ownership of the family home. They have been advised that Rich cannot place the home in joint names with Gary without incurring tax penalties, even though they both pay on a home equity loan used to improve the house. Moreover, Rich fears that if he were to die soon, then Gary might have to pay taxes on his own home which he would be inheriting from Rich.
88. Although they have a health care proxy for each other, they worry about what would happen if they encountered a medical emergency outside of the communities that know them so well. They also carry copies of their adoption decree for their daughter for fear that someone, somewhere, will not recognize that they are both parents.
89. Gary has a pension plan at work, but under state law, because he is a municipal employee, that plan does not allow him the same range of options in providing for his beneficiary that a married spouse has and thus he cannot provide the same security to his family that a married person could if he should predecease Rich.
90. Because there is no legal recognition for their committed relationship, Gary and Rich are not considered to have any legal relationship to each other. These Plaintiffs are denied on a daily basis the legal and social status of a marital relationship, as well as the protections, benefits and obligations -- financial, legal, emotional and others—afforded to married couples.
91. In addition to making a statement to the world about their relationship and gaining access to greater legal security, the plaintiffs seek to marry for the sake of their

Dependent Age Uniformity

For many years there has been confusion about when the dependent benefit provided for in Sections 7, 9, 12B, 26 and 100 should cease. All those sections except 12B provided that a dependent benefit would continue until age 21 so long as the dependent child remained a full-time student at an accredited educational institution. Confusingly, Section 12B provided that such benefits would end at age 21 in one part, and at age 22 in another part.

Outside Budget Sections 71 to 76 and Sections 78, 83, 84 and 87 provide that all dependent benefits under the aforementioned sections end at age 22 so long as the child is a full time student at an accredited educational institution. These sections of the law took effect on July 1st.

Section 71 also clears up an ambiguity in Section 7. There was confusion about whether a dependent child over age 18 on the date of the member's retirement was entitled to a dependent allowance. This was because before amendment, G.L. c. 32, § 7(2)(a)(iii) provided, in pertinent part:

A yearly amount of additional pension determined at the rate of...for any surviving unmarried child of such member who is under age eighteen or who was over said age and physically or mentally incapacitated from earning on the date of such member's retirement...

That section of the statute now reads:

A yearly amount of additional pension determined at the rate of ...for any surviving unmarried child of such member who is under 18, or, if over said age and under age 22, is a full-time student at an accredited educational institution, or who was over said age and physically or mentally incapacitated from earning on the date of such member's retirement...

Thus, children over the age of 18 on the date of their parent's retirement are eligible dependents under Section 7 provided the other criteria are met. Of note, PERAC had opined even before the change in the statute that children over the age of 18 were eligible dependents under Section 7. PERAC's interpretation was based on the following part of Section 7(2)(a)(iii):

Such additional pension on account of any child shall be paid only so long as such child survives, remains unmarried and is under the age of eighteen, or, if over said age, remains physically or mentally incapacitated from earning *or, if over said age and under age twenty-one, is a full-time student at an accredited institution.* (Emphasis supplied.)

SECTION 71. Section 7 of said chapter 32, as so appearing, is hereby amended by striking out the word “eighteen”, in line 88, and inserting in place thereof the following words:— 18, or, if over said age and under age 22, is a full-time student at an accredited educational institution,.

SECTION 72. Said section 7 of said chapter 32, as so appearing, is hereby further amended by striking out the word “twenty-one”, in line 97 and inserting in place thereof the figure:— 22.

SECTION 73. Section 9 of said chapter 32, as so appearing, is hereby amended by striking out the word “eighteen”, in line 55, and inserting in place thereof the following:— 18, or are over said age and under age 22 and full-time students at accredited educational institutions,.

SECTION 74. Said section 9 of said chapter 32, as so appearing, is hereby further amended by striking out the word “eighteen”, in line 60, and inserting in place thereof the following:— 18, or is over said age and under age 22 and is a full-time student at an accredited educational institution,.

SECTION 75. Said section 9 of said chapter 32, as so appearing, is hereby further amended in paragraph (c) of subdivision (2) by inserting at the end of said paragraph (c) the following new sentences:—

The words “full-time student” shall mean a child who is in full-time attendance in an accredited educational institution offering full-time courses of study equivalent to or higher than secondary school study. The words “accredited educational institution” shall mean any school, college, or university that is licensed, approved or accredited, as the case may be, in the state in which it is located.

SECTION 76. Said section 9 of said chapter 32, as so appearing, is hereby further amended by striking out the word “twenty-one”, in each of lines 73 and 79, and inserting in each place thereof the figure:— 22.

SECTION 78. Section 12B of said chapter 32, as so appearing, is hereby amended by striking out the word “twenty-one”, in lines 36 and 37, and inserting in place thereof the figure:— 22.

SECTION 83. Section 26 of said chapter 32 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out the word “eighteen”, in line 51, and inserting in place thereof the following:— 18, or, if over said age and under age 22, who is a full-time student at an accredited educational institution,.

SECTION 84. Said section 26 of said chapter 32, as so appearing, is hereby further amended by striking out the word “twenty-one”, in line 57, and inserting in place thereof the figure:— 22.

SECTION 87. Section 100 of said chapter 32, as so appearing, is hereby amended by striking out the word “twenty-one”, in line 32, and inserting in place thereof the figure:— 22.

Changes in and Relating to Section 15

As a result of outside sections 63 and 210 of the FY05 Budget, all public employers must immediately notify the appropriate retirement board when an employee is under indictment for misconduct in his or her elective or appointive office or employment, and has been suspended from his or her position. The employer is also required to notify the retirement board of the outcome of any charges that were brought against the individual.

Outside section 79 also adds a new subsection to G.L. c. 32, § 15. The new subsection 5 provides:

If the attorney general or any district attorney becomes aware of a final conviction of a member of a retirement system under circumstances which may require forfeiture of said member’s rights to a pension, retirement allowance, or a return of his accumulated total deductions pursuant to this chapter, sections 58 or 59 of chapter 30 or section 25 of chapter 258A, he shall immediately notify the commission of such conviction.

As the boards are well aware, Section 15(4) makes clear that “in no event” is a member, following a conviction of a criminal offense related to their office or position, entitled to a retirement allowance. It is hoped that these changes in the law, coupled with recent changes on the retirement forms, will aid both PERAC and the boards in identifying those individuals who may not be eligible for a retirement allowance.

- *Member’s Application for Disability Retirement*
- *Employer’s Statement Pertaining to a Member’s Application for Disability Retirement*
- *Disability Transmittal to the Commission*
- *Involuntary Retirement Application*
- *Application for Withdrawal of Accumulated Total Deductions*
- *Application for Voluntary Superannuation Retirement*
- *Employer’s Certification in Connection With Termination Retirement Allowance Pursuant to G.L. c. 32, § 10(2) to be Filed with the Retirement Board*
- *Termination Retirement Transmittal to the Commission*

Applicant's Last Name

First

M.I.

Social Security #

Other Actions Taken

As a result of the incidents or hazards that you have described, have you filed a grievance pursuant to a collective bargaining agreement?

☐

Not applicable

☐

No

☐

Yes

If "yes", please describe the status of your grievance.

Did your employer take any administrative or disciplinary action as a result of the incidents or hazards you have described?

G.L. c. 32, § 15

Have you been officially investigated for or charged with misappropriation of funds from your employer or convicted of any crime related to your office or position? ☐ Yes ☐ No

If yes, please provide documentation.

Workers' Compensation

Have you applied for, or are you receiving, or have you received weekly Workers' Compensation benefits or a Workers' Compensation settlement related to a claimed disability?

Section IIIF Benefits

Have you received or are you receiving benefits from a pension plan?

IMPORTANT NOTE: Individuals who are applying for Ordinary Disability Retirement are advised (bottom of page 4) that they can choose to skip pages 5-8. However, page 7 includes a question on Section 15 that all disability retirement applicants must answer. PERAC will move the question on Section 15 to the top of page 5 and place the instructions about completing the *rest* of pages 5-8 to an area immediately below that question.

Employer's Statement Pertaining to Member's Application for Disability Retirement 3

Applicant's Last Name

First

M.I.

Social Security #

(7) Has this employee been officially investigated for or charged with misappropriation of funds from his/her employer or convicted of any crime related to his/her office or position? ☐ Yes ☐ No

If **yes**, please provide documentation.

Medical Condition & Current Employment

(1) Has the applicant's medical condition affected his or her attendance and job performance?

Please describe how.

(2) Did the applicant request any modification of job duties in order to accommodate his or her medical condition? If yes, please explain.

(3) Has your department offered any modification of job duties or other reasonable accommodations to the applicant because of his or her medical condition? If so, please explain.

(4) Did the applicant file any grievances against your department that could be related to his or her claim for disability? Please explain the status of any such grievance.

(5) Based on the applicant's claim of disability, has your department conducted any tests or studies on the building in which your department is located or the surrounding grounds? If yes, please explain.

(6) Is the applicant's claimed disability the result of or in any way related to, a personnel action? If yes, please explain.

☐ - -
Member's Last Name First M.I. Social Security #

Name of Unit Job Title/Group

Date of Birth Date of Retirement Date of Membership

Years: Months: ☐ Yes ☐ No
Total Creditable Service Veteran Status

Annual rate of regular compensation on date of injury, or

Average annual rate of regular compensation for 12-month period last received

In case of an accidental disability/accidental death (other than in presumption cases), check appropriate provision:

- ☐ Notice to board within 90 days?
- ☐ Accident occurred within 2 years preceding date of application?
- ☐ Group 4 member: is the record of the injury on file in the official records of his/her department?

Information required in connection with G.L. c. 152 (Workers' Compensation) and G.L. c. 41, § 111F (Injured On Duty)

Covered by the Workers' Compensation Act? ☐ Yes ☐ No

Date compensation first received in connection with this accident?

At what weekly rate?

What period covered?

Receiving G.L. c. 41, § 111F benefits? ☐ Yes ☐ No

G.L. c. 32, § 15

Has the Retirement Board been made aware that this employee has been officially investigated for or charged with misappropriation of funds from his/her employer or convicted of any crime related to his/her office or position?

☐ Yes ☐ No

If **yes**, please provide documentation.

Involuntary Retirement Application (To Be Filed by an Employer)

Updated August, 2003

Retirement Board: Please place your address and phone number here. ▶

To: Retirement Board

This is an application to involuntarily retire the member named below. Attached is an explanation of the member's rights to a hearing and to appeal, and a brief statement of the member's retirement options. The member should contact his/her retirement board for further information or assistance.

A fair summary of the reasons for filing this application is below. The retirement board will review this application, together with information supplied by the employer and, if desired, by the member. If appropriate, the retirement board may then request a regional medical panel be convened. Based on the information gathered and the medical panel's opinion, the board will vote whether to approve or deny this application. The application will then be forwarded to the Public Employee Retirement Administration Commission for review and approval.

Pursuant to G.L. c. 32, §16(I), I respectfully request that (name of member), whose Social Security Number is - - , be retired on the basis of (please check one):

☐ Ordinary Disability ☐ Accidental Disability ☐ Superannuation

I offer the following fair summary of facts as the basis for my opinion that the member should be involuntarily retired:

Has this employee been officially investigated for or charged with misappropriation of funds from his/her employer or convicted of any crime related to his/her office or position? ☐ Yes ☐ No
If **yes**, please provide documentation.

I am submitting this form and the following attachments to the member's retirement board:

- A description of the member's job that includes all of his/her duties and responsibilities. I have specified those duties that are considered to be essential.
- Copies of all applicable medical information and accident reports.
- I will send a copy of this application form, a brief statement of the member's retirement options, and a statement of the member's rights to a hearing and review to the member by certified mail. I will then file a notice of delivery, including the certified mail return receipt, with the member's retirement board.

Name of Department Head (print)

Title of Department Head

Signature of Department Head

Date

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION
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<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="-"/>
Member's Last Name	First	M.I.	Social Security #

3) Have you been officially investigated for or charged with misappropriation of funds from your employer or convicted of any crime related to your office or position? ☐ Yes ☐ No
If **yes**, please provide documentation.

Method of Payment

4) Check One:

- ☐ A) I wish to have the amount of my Annuity Savings Fund that is eligible for a refund paid directly to me in full with the exception of the 20% withholding of the federally taxable portion, which will be paid to the Internal Revenue Service.
- ☐ B) I wish to have the federally taxable amount of my Annuity Savings Fund that is eligible for a refund paid directly to an IRA, a 401(a) qualified plan, a 403(b) annuity contract, or an eligible governmental 457(b) deferred compensation plan as specified below, with the federally non-taxable amount paid directly to me.
- ☐ C) I wish to have the federally non-taxable amount of my Annuity Savings Fund paid to an IRA or a 401(a) defined contribution plan as specified below, with the federally taxable amount paid directly to me.
- ☐ D) I wish to have the federally taxable amount of my Annuity Savings Fund that is eligible for a refund paid directly to an IRA, a 401(a) qualified plan, a 403(b) annuity contract, or an eligible governmental 457(b) deferred compensation plan as specified below, with the federally non-taxable amount of my Annuity Savings Fund paid to an IRA or a 401(a) qualified defined contribution plan as specified below.
- ☐ E) I wish to have _____% of the federally taxable amount of my Annuity Savings Fund that is eligible for a refund paid directly to me (on which I realize there will be 20% withholding paid to the Internal Revenue Service) and the balance of the federally taxable amount of my Annuity Savings Fund paid directly to an IRA, a 401(a) qualified plan, a 403(b) annuity contract, or an eligible governmental 457(b) deferred compensation plan as specified below, with the federally non-taxable amount paid directly to me.

For Taxable Portion

Name (IRA, qualified 401(a) plan, 403(b) annuity provider, or eligible governmental 457(b) deferred compensation plan)

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address of above-listed entity	City	State	Zip

Member's Account Number with above-listed entity

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Member's Address	City	State	Zip

Member's Last Name First M.I. Social Security #

For Non-Taxable Portion

Name (IRA, qualified 401(a) defined contribution plan)

Address of above-listed entity City State Zip

Member's Account Number with above-listed entity

Member's Address City State Zip

Member & Witness Signature Block

I request payment according to the method selected on page 2.

Member's Signature _____ Date of Signature _____

Witness' Signature _____

Witness' Printed Name _____ Date of Signature _____

Section B: To Be Completed by the Department Head

This is to notify the Retirement Board that was (job title)
in the department in the political subdivision of who
(Check One) ☐ resigned ☐ terminated on and that the above named employee will appear
on the payroll for the last time on the pay period ending .

1) To the best of my knowledge the above named employee is not leaving to accept a position in the service of the Commonwealth or any political subdivision thereof which would entitle the above to become a member of any similar contributory retirement system and is not seeking to be restored to the position from which such employee was terminated.

2) Was the above member employed less than full time? ☐ Yes ☐ No

3) Is the above employee receiving Workers' Compensation benefits? ☐ Yes ☐ No

4) Has this employee been officially investigated for or charged with misappropriation of funds from his/her employer or convicted of any crime related to his/her office or position? ☐ Yes ☐ No
If yes, please provide documentation.

Signature/Department Head _____

- -
 Member's Last Name First M.I. Social Security #

Employment History

Please supply all periods of service and specify any temporary or irregular service.

I was also employed by other governmental units/political subdivisions in the Commonwealth of Massachusetts as follows:

UNIT	DEPARTMENT	POSITION	DATES EMPLOYED	
<input type="text"/>	<input type="text"/>	<input type="text"/>	From <input type="text"/>	To <input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	From <input type="text"/>	To <input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	From <input type="text"/>	To <input type="text"/>

- Are you presently receiving a retirement allowance from any retirement system of any governmental units/political subdivisions within the Commonwealth of Massachusetts? ☐ Yes ☐ No
If **yes**, please specify systems, date of retirement and retirement type.

- Are you a veteran? ☐ Yes ☐ No
If **yes**, please specify military branch and dates of active service.

- Have you been officially investigated for or charged with misappropriation of funds from your employer or convicted of any crime related to your office or position? ☐ Yes ☐ No
If **yes**, please provide documentation.

- If you are applying for retirement by reason of resignation, failure of re-election or reappointment, removal or discharge under the provisions of G.L. c. 32, § 10; please briefly summarize the facts:

- I sign this application under the pains and penalties of perjury. I affirm that the information presented in this application is correct, complete and accurately presented. I understand that giving false or incomplete information may subject me to the loss of my benefits as well as civil and criminal penalties.

Applicant's Signature _____ Date _____

Applicant's Name (Print)

The following must be filed by you or your beneficiary with your retirement board:

- A properly completed *Application for Voluntary Superannuation Retirement* (this form).
- A properly completed *Choice of Retirement Option Form at Retirement*.
- A copy of your birth certificate, military discharge papers, marriage certificate, and/or other records applicable to your retirement.

*** For those retiring from regional or county retirement systems, please identify the community.**

Member's Last Name _____

First _____

M.I. _____

Social Security # _____

By way of further explanation, I state as follows: (Set forth a detailed statement of all circumstances surrounding the employee's termination, attaching supporting documents as needed).

G.L. c. 32, § 15

Has this employee been officially investigated for or charged with misappropriation of funds from his/her employer or convicted of any crime related to his/her office or position? ☐ Yes ☐ No

If **yes**, please provide documentation.

The statements and facts contained in this document are correct, complete and accurately presented and are made under the pains and penalties of perjury.

Signature of Employer _____

Print full name _____

Title _____

Date _____

Termination Retirement Transmittal to the Commission

Updated August, 2003

Retirement Board: Please place your address and phone number here. ▶

Member's Last Name _____ First _____ M.I. _____ Former or Maiden Name _____
Street Address _____ Social Security # _____
City _____ State _____ Zip _____

Retirement Board Decision

To the Commission:

We hereby certify that we have received the application of the above named member for a termination retirement, reviewed all of the documents submitted in connection with the application and have voted to grant the benefit in accordance with the provisions of G.L. c. 32, § 10(2). Pursuant to G.L. c. 32, § 21(1)(d) and § 21(3)(a), we are hereby forwarding our decision to you for review.

We made the following findings of fact. (By placing a check mark in the box to the left of the finding, the Board certifies that it has made the finding of fact.):

- ☐ that the employee has failed of nomination or re-election; or
- ☐ that the employee has failed of reappointment; or
- ☐ that the employee's office or position has been abolished; or
- ☐ that the employee has been removed or discharged from his position without moral turpitude on his part.

G.L. c. 32, § 15

Has the Retirement Board been made aware that this employee has been officially investigated for or charged with misappropriation of funds from his/her employer or convicted of any crime related to his/her office or position? ☐ Yes ☐ No

If **yes**, please provide documentation.

_____	Chair	_____	Member
_____	Member	_____	Member
_____	Member	_____	Date of Vote

See Page Two.

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION
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SECTION 79. Section 15 of said chapter 32, as so appearing, is hereby amended by adding the following subsection:—

(5) If the attorney general or any district attorney becomes aware of a final conviction of a member of a retirement system under circumstances which may require forfeiture of said member's rights to a pension, retirement allowance, or a return of his accumulated total deductions pursuant to this chapter, sections 58 or 59 of chapter 30 or section 25 of chapter 258A, he shall immediately notify the commission of such conviction.

SECTION 63. Section 59 of chapter 30, as so appearing, is hereby amended by inserting after the word "him", in line 26, the following words:—

, subject to the provisions of section 15 of chapter 32. The employer of any person so suspended shall immediately notify the retirement system of which the person is a member of the suspension and shall notify the retirement board of the outcome of any charges brought against the individual.

SECTION 210. Section 25 of chapter 268A of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by inserting after the word "him", in line 28, the following words:— , subject to section 15 of chapter 32. The employer of a person so suspended shall immediately notify the retirement system of which the person is a member of the suspension and shall notify the retirement board of the outcome of any charges brought against the individual.

